

1 UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF VIRGINIA
 3 Alexandria Division

4 UNITED STATES OF AMERICA, : Criminal Case
 5 : No. 1:23-CR-00119-TSE-1
 6 Plaintiff :
 7 :
 8 v. : **INCLUDES SEALED
 9 : PORTION**
 10 CONOR BRIAN FITZPATRICK, :
 11 : July 23, 2023
 12 Defendant : 5:00 p.m.
 13 :

14 TRANSCRIPT OF PLEA HEARING
 15 ** INCLUDES SEALED PORTION **
 16 BEFORE THE HONORABLE T.S. ELLIS, III
 17 UNITED STATES DISTRICT JUDGE

18 APPEARANCES:

19 FOR THE PLAINTIFF: AARASH HAGHIGHAT
 20 LAUREN POMERANTZ HALPER
 21 UNITED STATES ATTORNEY'S OFFICE
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(APPEARANCES CONTINUED ON
 FOLLOWING PAGE:)

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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P R O C E E D I N G S

COURTROOM CLERK: Court calls criminal case United States of America versus Conor Brian Fitzpatrick, case Number 2023-CR-119.

May I have appearances, please, first for the government.

MR. HAGHIGHAT: Your Honor, Aarash Haghighat on behalf of the government. And I'm here with Lauren Halper.

THE COURT: All right. And who is here for the defendant?

MS. GINSBERG: Good afternoon, Your Honor. Nina Ginsberg and Peter Katz for Mr. Fitzpatrick. Mr. Katz is his primary counsel. He's been admitted *pro hac vice* in the magistrate court. He's admitted to the bars of the states of New York and New Jersey, and a number of District Courts in both states, Pennsylvania, and the U.S. Supreme Court.

May I introduce him to Your Honor.

THE COURT: Thank you. Good afternoon, Ms. Ginsberg and Mr. Katz.

MR. KATZ: Good afternoon, Your Honor.

THE COURT: Nice to see you again, Ms. Ginsberg.

MS. GINSBERG: Thank you, Your Honor. You too.

THE COURT: And Mr. Haghighat, good afternoon, sir.

MR. HAGHIGHAT: Good afternoon.

THE COURT: All right. And Mr. Fitzpatrick is present

1 in the courtroom. Good afternoon to you, sir.

2 THE DEFENDANT: Good afternoon, Your Honor.

3 THE COURT: Now, who else is in the courtroom here?

4 MR. HAGHIGHAT: Your Honor, this is Mr. Fitzpatrick's
5 father, and we have personnel from the FBI.

6 THE PROBATION OFFICER: The probation officer.

7 (OFF THE RECORD.)

8 THE COURT: Again, good afternoon to all of you. And I
9 understand Mr. Fitzpatrick is here to plead guilty to a criminal
10 information charging him with engaging in a conspiracy to commit
11 access device fraud and unauthorized solicitation of access
12 device fraud, possession of child pornography.

13 Those are the three claims, or three charges?

14 MR. HAGHIGHAT: Yes, Your Honor.

15 THE COURT: All right. Now, Mr. Fitzpatrick, come to
16 the podium, please, sir. Mr. Fitzpatrick, I'm going to have you
17 placed under oath because I'm going to ask you a series of
18 questions designed to enable me to determine from the answers
19 that you give whether your plea of guilty to these charges in
20 the criminal information is a knowing and a voluntary plea; that
21 is, that you understand the nature of the charges to which
22 you're intending to plead guilty, that you understand the
23 penalties or punishments that may result from your pleading
24 guilty to these charges, and that you understand all the rights
25 you'll be giving up by pleading guilty to those charges. And,

1 understanding all of that, that the answers you give will enable
2 me to determine whether you're pleading guilty freely,
3 willingly, and voluntarily.

4 You may administer the oath to Mr. Fitzpatrick.

5 (Oath administered by courtroom deputy clerk.)

6 THE COURT: Mr. Fitzpatrick, do you understand, sir,
7 that you are now under oath, and if you answer any of the
8 Court's questions falsely, you may be prosecuted for perjury or
9 for making a false statement?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Mr. Fitzpatrick, I am advised that you are
12 here today intending to plead guilty to three charges against
13 you in the criminal information. Is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand that those three
16 charges -- let me review those with you. The first is engaging
17 in a conspiracy to commit access device fraud, in violation of
18 Sections 1029, and 3559 of Title 18. Have you discussed that
19 charge with your attorney?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And are you fully satisfied with the advice
22 and counsel Mr. Katz has provided to you in this case?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: The second charge that I understand you
25 intend to plead guilty to is access device fraud, unauthorized

1 solicitation, in violation of Sections 1029(a)(6) and Section 2.

2 Have you discussed that charge with Mr. Katz?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And finally, possession of child
5 pornography, in violation of 2252(a)(4)(B) and (b)(2), have you
6 discussed that charge with Mr. Katz?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And I take it -- let me ask you again, are
9 you satisfied with the advice and counsel you've received from
10 him?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Let me ask, Mr. Fitzpatrick, you understand
13 that all of those charges are serious felony offenses?

14 THE DEFENDANT: Yes.

15 THE COURT: And ordinarily the government could not
16 proceed against you on such serious felony charges without first
17 obtaining an indictment - that is, an accusation against you -
18 by a grand jury. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have you discussed your right to compel the
21 government to proceed against you by way of an indictment
22 against you with Mr. Katz?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that if you insist on
25 having the government proceed by way of a grand jury indictment

1 on these charges in the criminal information, that the
2 government would then have to present evidence to a grand jury,
3 and the grand jury would have to find that it was more likely
4 than not that these offenses were committed, and that you
5 committed them, before a grand jury would indict you on these
6 charges?

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And do you understand that a grand jury is
10 composed of at least 16 and not more than 23 persons, and if you
11 insisted on having the government proceed by way of a grand jury
12 indictment, the government, as I said, would have to present
13 evidence to a grand jury. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you understand that at least 12
16 members of the grand jury would have to find that there was
17 probable cause to believe that you committed the crimes before
18 an indictment would issue?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you wish to waive your right to have the
21 government proceed solely by way of a grand jury indictment on
22 these charges against you?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You do?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. What is your full name?

2 THE DEFENDANT: Conor Brian Fitzpatrick.

3 THE COURT: What is your age?

4 THE DEFENDANT: 20.

5 THE COURT: What is the highest grade in school that
6 you've completed?

7 THE DEFENDANT: 12th grade.

8 THE COURT: And where did you complete the 12th grade?

9 THE DEFENDANT: Peekskill High School.

10 THE COURT: Peekskill High School?

11 THE DEFENDANT: Uh-huh.

12 THE COURT: Is that in New York?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And did you attend college or university?

15 THE DEFENDANT: I attended two semesters, Your Honor.

16 THE COURT: Where? You'll have to speak up.

17 THE DEFENDANT: At Westchester Community College.

18 THE COURT: And what did you study there?

19 THE DEFENDANT: Computer science.

20 THE COURT: Have you had any formal education since
21 that time?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Do you have any difficulty reading and
24 writing English?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Let me ask you again, do you wish to waive
2 your right to compel the government to proceed by way of a grand
3 jury indictment on these charges against you in the criminal
4 information?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you know of any reason why he should not
7 waive that right, Mr. Katz?

8 MR. KATZ: I do not, Your Honor.

9 THE COURT: The Court in the case of United States
10 versus Conor Brian Fitzpatrick finds that the defendant is fully
11 competent and capable of waiving his right to compel the
12 government to proceed by way of a grand jury indictment on these
13 felony charges against him, and that his waiver of that right is
14 knowing and voluntary.

15 He may now execute the waiver of indictment form here
16 in open court. If he has previously signed it, have him initial
17 it.

18 MR. KATZ: He has not previously signed it.

19 THE COURT: All right. Sign the waiver of indictment
20 form, please, sir, and I will add my signature to it.

21 Now, Mr. Fitzpatrick, let me ask you again, have you
22 read the charges against you in the criminal information?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that in Count I of the
25 criminal information, you are charged as follows: That from at

1 least in or around March 2022 through on or about March 15,
2 2023, in the Eastern District of Virginia and elsewhere, that
3 you knowingly and with the intent to defraud combined,
4 conspired, confederated, and agreed with other members of the
5 website known as BreachForums, including BreachForums moderators
6 and vendors, to commit and aid and abet the commission of
7 knowingly to -- and with intent to defraud, to traffic in and
8 use one or more unauthorized access devices during a one-year
9 period, to wit, payment card data, bank routing and account
10 numbers, Social Security numbers, and log-in credentials,
11 including surnames -- usernames and associated passwords
12 intended to be used to access certain online accounts provided
13 by account issuers and other entities in the United States.
14 And, by such conduct, to obtain things of value aggregating a
15 thousand dollars or more during that period; said conduct
16 affecting interstate and foreign commerce, in violation of
17 Title 18, Sections 1029(a)(2).

18 And the second object of the conspiracy is, without the
19 authorization of the issuers of access devices, knowingly and
20 with intent to defraud to solicit a person for the purpose of
21 selling unauthorized access devices, to wit, payment card data,
22 bank routing and account numbers, and Social Security numbers,
23 log-in credentials, including usernames and associated passwords
24 intended to be used to access online accounts provided by
25 account users and other entities in the United States, said

1 conduct affecting interstate and foreign commerce, in violation
2 of Title 18, U.S. Code Section 29(a)(6) and (2).

3 And it was further a part of the conspiracy that you
4 and your co-conspirators knowingly and falsely registered domain
5 names, including breached.vc, breached.to -- I can't read all of
6 it, but it's a long -- breachforums.net, .com, and .org domain
7 names in the course of committing the offense charged in
8 Count I.

9 Do you understand that's the charge against you in
10 Count I of the information?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you understand that the charge
13 against you in Count II of the information is that from in or
14 about June 28, 2022, through on or about July 6, 2022, in the
15 Eastern District of Virginia and elsewhere, that you knowingly
16 and with intent to defraud did aid and abet the solicitation of
17 a person for the purposes of offering unauthorized access
18 devices, as defined by 18 U.S.C., Sections 1029(e)(1) and
19 (e)(3), to wit, bank account and routing numbers and
20 Social Security numbers, and solicitation affecting interstate
21 and foreign commerce, in that the solicitation occurred via the
22 internet and between computers located inside the
23 Commonwealth of Virginia and computers located outside of the
24 Commonwealth of Virginia, in violation of Title 18, U.S. Code,
25 Sections 1029(a)(6) and Section 2.

1 Do you understand that's what you're charged with in
2 Count II; namely, unauthorized access device fraud, unauthorized
3 solicitation?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And in Count III, Mr. Fitzpatrick, you're
6 charged as follows: That on or about March 15, 2023, in the
7 Southern District of New York, that you knowingly possessed and
8 attempted to possess at least one matter containing one or more
9 visual depictions that had been transported using a means and
10 facility of interstate and foreign commerce, and in and
11 affecting interstate and foreign commerce; and which visual
12 depictions were produced using materials which had been mailed
13 and so shipped and transported by any means, including by
14 computer; and the production of such visual depictions involved
15 the use of a minor engaging in sexually explicit conduct; and
16 such visual depictions were such conduct, to wit, videos
17 depicting prepubescent minors and minors who had not obtained
18 the age of 12 years engaging in sexually explicit conduct,
19 stored on a Dell Inspiron 5593 laptop computer with a
20 Samsung 870 QVO solid state drive, all in violation of Title 18
21 U.S. Code, Section 2252(a)(4)(B) and Section (b)(2).

22 So do you understand that that's what you're charged
23 with in Count III; namely, possession of child pornography,
24 Mr. Fitzpatrick?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Mr. Fitzpatrick, it's important
2 that you understand what all of these charges, what the possible
3 penalties or punishments are if the Court accepts your pleas of
4 guilty.

5 For Count I, do you understand that the maximum penalty
6 for Count I is 10 years imprisonment, a fine of up to \$250,000,
7 full restitution, forfeiture of assets as outlined in the plea
8 agreement, and three years of supervised release to follow any
9 period of incarceration. And if you were to violate any of the
10 conditions of supervised release while you're on supervised
11 release, you could be returned to prison for the full supervised
12 release term.

13 So do you understand those are the penalties or
14 punishments, if the Court accepts your plea, with respect to
15 Count I?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: With respect to Count II, similarly, the
18 maximum penalties for solicitation for the purpose of offering
19 access devices are 10 years in prison, a fine of up to \$250,000,
20 full restitution to any victims of the offense, forfeiture of
21 assets as outlined in the plea agreement, and a \$100 special
22 assessment. There's also a \$100 special assessment for the
23 first count. And three years of supervised release.

24 And again, if you were to violate any of the conditions
25 of supervised release while you were on supervised release, you

1 could be returned to prison for the full supervised release
2 term.

3 Do you understand that all of those are punishments or
4 possible punishments that may result from your pleading guilty
5 to Count II of the information?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, with respect to Count III of the
8 information - that is, possession of child pornography - the
9 maximum penalty is 20 years imprisonment, a fine of up to
10 \$250,000, full restitution to any victims of the offense, and a
11 minimum supervised release term of five years to a maximum of
12 life.

13 And again, if you were to violate any of the conditions
14 of supervised release while you were on supervised release, you
15 could be returned to prison for the full supervised release
16 term.

17 Do you understand, Mr. Fitzpatrick, that all of those
18 are punishments or possible punishments that may result from
19 your pleading guilty to Count III; that is, the possession of
20 child pornography count?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Mr. Fitzpatrick, you have a plea agreement
23 and a statement of facts that it appears you have signed. Did
24 you read those documents?

25 THE DEFENDANT: Yes, I did, Your Honor.

1 THE COURT: And did you consult with Mr. Katz, your
2 attorney, with respect to each of those documents?

3 THE DEFENDANT: Yes, I did, Your Honor.

4 THE COURT: I'm going to have the court security
5 officer hand you what appear to be your plea agreement and
6 statement of facts which you signed. I want you to look at them
7 and tell me whether they are -- so look at these. Look first at
8 the plea agreement.

9 Is that your plea agreement, Mr. Fitzpatrick, that you
10 conferred with Mr. Katz about and signed after you read it?

11 THE DEFENDANT: Yes, it is, Your Honor.

12 THE COURT: Does your signature on the plea agreement
13 signify, again, that you have read it and that you understand
14 it, and you agree to the terms and conditions of the plea
15 agreement?

16 THE DEFENDANT: Yes, it does, Your Honor.

17 THE COURT: Look now at your statement of facts. Is
18 that the statement of facts that you read, conferred with your
19 counsel on, and signed?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And does your signature appearing on the
22 statement of facts signify that you have read the statement of
23 facts and you agree that it is true and accurate in all
24 respects?

25 THE DEFENDANT: Yes, I did, Your Honor.

1 THE COURT: All right. Return those to the bench,
2 please.

3 Now, Mr. Fitzpatrick, I'm going to summarize the
4 essential terms of your plea agreement. Pay careful attention
5 to my summary, because at the conclusion I will ask you whether
6 those are the terms of your plea agreement with the government
7 as you understand it.

8 Under the plea agreement, you've agreed to plead guilty
9 to a three-count criminal information charging you with
10 conspiracy to commit access device fraud in Count I, and in
11 Count II with solicitation for the purpose of offering access
12 devices, and in Count III with possession of child pornography.

13 And then the plea agreement recites, as I just did a
14 few minutes ago, what the maximum penalties are for each of
15 those crimes. First, the maximum penalty for conspiracy to
16 commit access device fraud in Count I is 10 years in prison, a
17 fine of up to \$250,000, full restitution to any victims of the
18 offense, forfeiture of assets, a \$100 special assessment, and
19 three years of supervised release.

20 And then the maximum penalties for solicitation for the
21 purpose of offering access devices are 10 years of imprisonment,
22 a fine of up to \$250,000, full restitution, forfeiture of assets
23 as outlined in the plea agreement, and three years of supervised
24 release to follow any period of incarceration.

25 And the plea agreement then goes on to note that the

1 maximum penalty for possession of child pornography is 20 years
2 in prison, a fine of up to \$250,000, full restitution to any
3 victims of the offense, forfeiture of assets as outlined in the
4 plea agreement, and the special assessment pursuant to statute,
5 and a minimum supervised release term of five years and a
6 maximum of life.

7 And the plea agreement notes that on all of the
8 supervised release terms, if you were to violate any of the
9 conditions of the supervised release, you could be returned to
10 prison for the full supervised release term.

11 The plea agreement goes on, Mr. Fitzpatrick, and
12 provides that you are representing that you're pleading guilty
13 to these charges because you're in fact guilty. You admit the
14 facts set forth in the statement of facts, and you agree that
15 those facts establish your guilt of the charged offenses beyond
16 a reasonable doubt. And the statement of facts is incorporated
17 and will be the basis for the calculation of your sentencing
18 guideline range.

19 I will point out for counsel that Paragraph 2 in the
20 plea agreement is fairly standard, and it should have been,
21 however, carefully read and it should be in the plural rather
22 than the singular. It's charges, not charge. Do you see what
23 I'm referring to?

24 MR. HAGHIGHAT: Yes, Your Honor.

25 THE COURT: In the future, read these carefully. The

1 fact that you use well accepted language is fine, but it needs
2 to be suitable for the precise case.

3 The plea agreement goes on, Mr. Fitzpatrick, and
4 provides that you're satisfied that Mr. Katz has rendered
5 effective assistance to you in this case, and that you
6 understand that by entering into the plea agreement, you're
7 giving up your right to a jury trial. And then the plea
8 agreement sets out what those rights are in very brief shorthand
9 fashion, and I'll review those with you in greater detail in a
10 few minutes.

11 The plea agreement goes on, Mr. Fitzpatrick, and
12 provides that you understand that the Court has the power to
13 impose any sentence on you up to the statutory maximum for these
14 offenses, but that your sentence hasn't yet been imposed. Your
15 sentence is uncertain at this time, what sentence you will
16 actually receive. Any estimate of a sentence you receive from
17 Mr. Katz or from the government or from anyone, those are merely
18 estimates. They are not promises, they are not assurances.
19 Indeed, the government specifically notes that it makes no
20 promise or representation to you concerning what sentence you
21 will actually receive.

22 And the plea agreement also notes that the sentencing
23 guidelines are one factor for the Court to take into account.
24 They are not mandatory as they once were.

25 The plea agreement goes on to provide that you and the

1 government have agreed to recommend to the Court -- they're
2 merely recommendations. I'm not bound by the recommendations.
3 I could reach a different result. But you and the government
4 have agreed to recommend to the Court that for Counts I and II,
5 the offense level should be 6, plus 2 for 10 or more victims,
6 and plus 2 for if the offense involves receiving stolen
7 property, and plus 2 if there was intentional use of
8 sophisticated means, and another plus 2 for trafficking of
9 unauthorized access devices, and another plus 2 if the offense
10 involved the unauthorized public dissemination of personal
11 information, and a plus 4 if defendant -- if you were an
12 organizer or leader of a criminal activity that involved five or
13 more participants, and another plus 2 under 3559(g)(1).

14 What is that for, Mr. Katz or -- let me ask the
15 government, what's that for?

16 MR. HAGHIGHAT: False domain registration.

17 THE COURT: Oh, yes, domain name registration. All
18 right.

19 So that would be a total of 22 in the recommendation.
20 In other words, you and the government have agreed to recommend
21 that the total offense level would be 22, less acceptance of
22 responsibility. And the government has also agreed to file a
23 motion under acceptance of responsibility for an additional
24 level.

25 And you also have agreed to recommend to the Court that

1 your offense level should be increased by at least 14 levels
2 because the loss foreseeably resulting from your offenses
3 exceeded 550,000, and the plea agreement notes that the
4 government reserves the right to argue at sentencing that the
5 Court should increase the offense level by more than 14 levels.
6 The defendant reserves the right to oppose any further increases
7 to the offense level, but the government and the defendant agree
8 that it should be increased by 14 levels, at least.

9 MR. HAGHIGHAT: Yes, Your Honor.

10 THE COURT: And then, with respect to Count III - that
11 is, the possession of child pornography - the government and the
12 defendant agree to recommend to the Court that the base offense
13 level should be 18, with two levels added because prepubescent
14 minors - that is, minors who have not attained the age of
15 12 years - were involved; and another two levels for the use of
16 a computer for receipt, distribution, or transmission of the
17 material; and another five levels for the offense involving 600
18 or more images, for a total of 27.

19 And you and the government in the plea agreement have
20 agreed to recommend jointly to the Court that the Court treat
21 the offenses of conviction charged in Counts I and II as one
22 group of closely related counts, and the offense of conviction
23 charged in Count III as a second group of closely related
24 counts, pursuant to Section 3D1.2.

25 And you and the government have also agreed to

1 recommend to the Court that if you qualify for a two-level
2 decrease for acceptance of responsibility, then the government
3 will file a motion for an additional level of credit for
4 acceptance of responsibility owing to your prompt decision to
5 plead guilty.

6 And apart from those that I've mentioned, the plea
7 agreement notes that you and the government have not agreed on
8 any further sentencing issues other than those specifically set
9 forth in the plea agreement.

10 And the plea agreement also notes that stipulation on
11 the guideline provision does not limit the parties' arguments as
12 to any other guidelines provisions or sentencing factors under
13 3553(a), including arguments for a sentence within or outside
14 the advisory guideline range.

15 The plea agreement goes on to provide that you
16 understand that venue for Count III lies in the
17 Southern District of New York, and that you can't be compelled
18 to answer that charge in the Eastern District of Virginia.
19 Nonetheless, you've agreed to waive venue and consent to being
20 charged by criminal information with this offense in the
21 Eastern District of Virginia.

22 So the plea agreement goes on, Mr. Fitzpatrick, and
23 provides that you understand that the law entitles you a right
24 to appeal the sentence imposed, but you, here in your plea
25 agreement, waive the right to appeal your convictions and any

1 sentence within the statutory maximum described in this case, or
2 on any ground whatsoever other than an ineffective assistance of
3 counsel claim cognizable on direct appeal.

4 In other words, Mr. Fitzpatrick, in your plea agreement
5 you're waiving your right to appeal your conviction and your
6 sentence on these three charges on any ground other than an
7 ineffective assistance of counsel claim cognizable on direct
8 appeal.

9 And you also waive any rights you would have to request
10 or receive from any department or agency of the United States
11 any records that may be sought under the Freedom of
12 Information Act or any other provision.

13 And the government has agreed that it will not
14 prosecute you further in the Eastern District of Virginia for
15 the specific conduct described in the information or statement
16 of facts. The plea agreement and statement of facts do not
17 confer any immunity on you.

18 Here's another problem. If you look at that provision,
19 you've got a verb/subject disagreement. Do you see that? "The
20 plea agreement and statement of facts do not," not "does not."
21 Do you see that?

22 MR. HAGHIGHAT: Yes, Your Honor.

23 THE COURT: Read these things before you submit them.

24 The plea agreement goes on to provide that any monetary
25 penalties imposed by the Court at sentencing would be due and

1 payable immediately, and subject to immediate enforcement by the
2 government. In other words, the government could obtain a
3 judgment and collect on that immediately.

4 And if you're incarcerated, you've agreed in your plea
5 agreement to participate voluntarily in the Bureau of Prisons
6 inmate financial responsibility program, regardless of whether
7 the Court specifically orders it. And you've agreed to make
8 good faith efforts to the payment of all monetary penalties.

9 The plea agreement continues and notes that you've
10 agreed to pay a mandatory special assessment of \$100 per count
11 of conviction. So that's \$300. And you further understand and
12 agree that pursuant to the law, if the Court should find that
13 you are a non-indigent, that you are not indigent, the Court
14 shall impose an additional special assessment of \$5,000 on you,
15 per count of conviction, for each offense listed in
16 Section 3014(a).

17 That would be Counts I and II, would it not?

18 MR. KATZ: I believe that's Count III.

19 MR. HAGHIGHAT: It's Count III, I believe.

20 THE COURT: III, Count III. However, the plea
21 agreement notes that that special assessment shall not be
22 payable until defendant has satisfied all outstanding court
23 orders, ordered fines, orders of restitution, and any other
24 obligation related to victim compensation.

25 You further understand and agree, in addition to any

1 other penalties or restitution authorized by law, the Court will
2 impose on you any applicable special assessments per count of
3 conviction for each offense listed in 2259(a), after considering
4 the factors set forth in the statute, up to a maximum of \$17,000
5 as to Count III.

6 However, imposition of an assessment under 2259(a) does
7 not relieve defendant of or entitle defendant to reduce the
8 amount of any other penalty by the amount of the assessment.
9 And any money received from the defendant must be disbursed
10 based on the sequence listed in the law.

11 Now, the plea agreement continues, Mr. Fitzpatrick, and
12 provides that you understand and agree that restitution is
13 mandatory under the law, and you've agreed to the entry of a
14 restitution order for the full amount of the victims' losses, as
15 those losses are defined in the law.

16 You also agree that victims of the conduct described in
17 the charging instrument, statement of facts, or any other
18 related or similar conduct are victims within the meaning of
19 2259(c) of Title 18, and are entitled to restitution. And you
20 understand and agree that pursuant to 2259(b)(2)B, the Court
21 must order restitution to each victim in an amount not less than
22 \$3,000.

23 And you also agree in the plea agreement that
24 restitution is mandatory under the law, and you agree to entry
25 of a restitution order for the full amount of the victims'

1 losses as determined by the Court.

2 And you also agree that an offense listed in
3 3663(a) (C) (1) gave rise to this plea agreement, and, as such,
4 victims of the conduct described in the charging instrument,
5 statement of facts, or any related or similar conduct, shall be
6 entitled to restitution.

7 And the plea agreement goes on and notes that the
8 parties acknowledge that determination of the identities,
9 addresses, and loss amounts for the victims is a matter that is
10 complicated and time-consuming. To that end, you've agreed that
11 the Court may defer imposition of restitution until after
12 sentencing. However, defendant specifically waives the 90-day
13 provision found in the law, and consents to the entry of any
14 orders pertaining to restitution after sentencing, without
15 limitation.

16 The plea agreement continues, Mr. Fitzpatrick, and
17 provides that you understand and agree that the forfeiture of
18 assets is part of the sentence that must be imposed in this
19 case, and you've agreed to forfeit all proceeds that you and
20 your co-conspirators received from your participation in the
21 crimes charged in the information, which you and the government
22 agree amounts to at least \$698,714.

23 And you further agree to forfeit all interests in any
24 child pornography-related and fraud-related assets that the
25 defendant used or over which the defendant exercises control,

1 directly or indirectly. This includes any properties traceable
2 to, derived from, fungible with, or a substitute for the
3 property that constitutes the proceeds of the offense, and
4 property used or involved in the offense, including all crypto
5 currency, fiat currency, domain names, and computers and
6 electronic media specified in the forfeiture notice in the
7 criminal information and the consent forfeiture order.

8 And you understand that if assets subject to forfeiture
9 are not available to be forfeited, the Court is required by law
10 to enter a forfeiture money judgment in the amount of all
11 unavailable assets. And you've agreed to waive all interest in
12 the assets in any administrative or judicial forfeiture
13 proceeding, whether in criminal, civil, state, or federal. And
14 you've agreed to consent to the entry of orders of forfeiture
15 for such property, and you waive requirements of the
16 Federal Rules requiring notice of the forfeiture in the charging
17 instrument and announcement of forfeiture at sentencing and
18 incorporation of the forfeiture in the judgment.

19 And the plea agreement goes on to provide that you've
20 agreed to waive all constitutional and statutory challenges to
21 any forfeiture carried out in accordance with this plea
22 agreement.

23 You've also agreed to take all steps as requested by
24 the government to pass clear title to the government of any
25 forfeitable assets, and to testify truthfully in any judicial

1 forfeiture proceedings. And you understand and agree that all
2 property covered by this agreement is subject to forfeiture as
3 proceeds of illegal conduct and property used or involved in the
4 offense.

5 And you've agreed to participate fully in the
6 government's pre and post-judgment financial investigation,
7 including the identification of assets in which you have any
8 legal or equitable interest, to determine which assets may be
9 available for payment or restitution, forfeiture, and/or any
10 fine imposed in the case. You've also agreed that your
11 financial information is subject to investigation and disclosure
12 prejudgment to the same extent as financial information will be
13 subject to discovery after judgment is imposed.

14 And you understand that the government is entitled to
15 obtain your credit report after sentencing, and you expressly
16 authorize the government to obtain the credit report prior to
17 sentencing. And you've also agreed that if the government
18 determines that it will obtain your credit report prior to
19 sentencing, the defendant authorizes the government, and the
20 government agrees to provide a copy to defense counsel upon
21 request.

22 The defendant understands that failure to participate
23 in a financial investigation as described in the plea agreement
24 may constitute a failure to accept responsibility under the
25 guidelines.

1 Within 14 days of a request by the government, the
2 defendant has agreed to provide all information about all of
3 defendant's assets and financial interests to the government and
4 the probation office. And you've agreed to undergo a polygraph
5 examination on your assets if the government chooses to
6 administer it. And you've also agreed to complete a financial
7 disclosure statement under penalty of perjury.

8 You also have agreed to provide or consent to the
9 release of your tax returns for the last five years, and you
10 understand that assets and financial interests subject to
11 disclosure include assets owned or held, directly or indirectly,
12 individually or jointly, in which you have any legal interest,
13 regardless of title, including interest held or owned under any
14 other name, trust, or business entities presently and since the
15 date of the first offense giving rise to this plea agreement, or
16 giving rise to the charges presently pending against the
17 defendant, whichever is earlier.

18 You've also agreed to identify all assets valued at
19 more than \$5,000 transferred to third parties since the date of
20 the first offense giving rise to this plea agreement. And
21 you've also agreed not to transfer any assets valued at more
22 than \$5,000 without the approval of the asset recovery unit of
23 the U.S. Attorney's Office until the fine, forfeiture, and
24 restitution ordered by the Court are paid in full or otherwise
25 terminated by operation of law.

1 You've also agreed to take all steps, as requested by
2 the government, to obtain from other parties, such as banks, by
3 any lawful means, any records of assets contemplated by this
4 paragraph.

5 The government has agreed that it won't use any
6 truthful information that you provide, any complete information
7 that you provide pursuant to the plea agreement for additional
8 criminal offenses against the defendant in the Eastern District
9 of Virginia, except in the prosecution for a crime of violence
10 or conspiring to commit a crime of violence or aiding and
11 abetting a crime of violence.

12 And no truthful information that you provide pursuant
13 to the obligations under the plea agreement will be used in
14 determining the applicable guideline range, except as provided
15 in the guidelines under Section 1D1.8B.

16 Is that the relevant conduct provision, counsel for the
17 government?

18 MR. HAGHIGHAT: I believe so, yes, Your Honor.

19 THE COURT: It is. All right.

20 Well, the plea agreement makes clear that nothing in
21 the agreement restricts the court's or probation officer's
22 access to records in the possession of the United States, and
23 nothing in the agreement prevents the United States in any way
24 from prosecuting defendant should the defendant knowingly
25 provide false, untruthful, or perjurious information or

1 testimony, or from using information provided by the defendant
2 in furtherance of any forfeiture action or restitution and
3 enforcement action, whether criminal, civil, administrative, or
4 judicial.

5 The plea agreement, Mr. Fitzpatrick, continues and says
6 that you have been advised and you understand that under the Sex
7 Offender Registration and Notification Act, you have to register
8 and maintain the currency of such registration as a sex offender
9 in each of the following jurisdictions:

10 Where you live - that is, reside - where you work -
11 that is, where you're employed - or where you are a student -
12 that is, where you are studying in a program. And you
13 understand that the requirements for registration include
14 providing true residence and names and addresses of any places
15 where you are or will be an employee or a student.

16 And you also understand that the requirement to
17 maintain the accuracy or currency of the registration requires
18 informing at least one jurisdiction in which you reside or are
19 an employee or a student not later than three business days of
20 any change of your name, residence, employment, or student
21 status. And the failure to comply with these Sex Offender
22 Registration Notification Act obligations would subject you to
23 prosecution which is punishable by a fine or imprisonment or
24 both.

25 **(The following proceedings were HELD UNDER SEAL:)**

1 THE COURT: The plea agreement continues and provides
2 that you've agreed to cooperate fully and truthfully, fully and
3 completely with the United States, and provide the government
4 with all information that you know about regarding any criminal
5 activity, not just that that's involved in this case. But if
6 you know about any criminal activity, you're obligating yourself
7 to disclose that to the government.

8 Specifically, you're agreeing to testify truthfully and
9 completely at any grand juries, trials, or other proceedings.
10 You've agreed to be reasonably available for debriefings and
11 pretrial conferences that the government may require. You've
12 also agreed to provide all documents, records, writings, or
13 other materials of any kind in your possession or control or
14 care to the government.

15 You've also agreed that at the request of the
16 government, you'll submit voluntarily to a polygraph, a lie
17 detector test, and that the government will choose the polygraph
18 examiner and specify the procedures for the examination.

19 The plea agreement continues that the statement of
20 facts that you've submitted, together with the plea agreement to
21 support the plea, is limited to information to support the plea,
22 and that you'll provide additional facts and details during your
23 debriefings. And the plea agreement also notes that while
24 you're cooperating with the government, the government is not
25 obligated to seek your cooperation.

1 And the plea agreement notes that if you violate any
2 state, local, or federal law while you're cooperating with the
3 government, you are not privileged to do so simply because
4 you're cooperating. You have no privilege to violate state,
5 local, or federal law. And if you do so, then the government
6 may, in its discretion, consider any such violation in
7 determining and evaluating whether to file a motion for a
8 downward departure reduction of your sentence owing to your
9 cooperation.

10 The plea agreement goes on to provide that the
11 government agrees not to use truthful information that you
12 provide under the plea agreement in any criminal prosecution
13 against you in the Eastern District of Virginia. The only
14 exception to that is any prosecution for a crime of violence or
15 conspiring to commit or aiding and abetting a crime of violence.

16 And no truthful information that the government -- or
17 that you provide, the defendant provides under this agreement,
18 will be used in determining the guideline range, except as
19 provided in Section 1D1.8B.

20 The plea agreement goes on to provide that the
21 U.S. Attorney's Office in the Eastern District of Virginia
22 agrees that it will not contact any other state or federal
23 prosecuting jurisdiction and voluntarily turn over truthful
24 information that you provide under the agreement to aid the
25 prosecution of defendant in that jurisdiction.

1 And if any other prosecuting jurisdiction attempts to
2 use truthful information that you provide under this agreement
3 against you, then the U.S. Attorney's Office in this district,
4 the Eastern District of Virginia, agrees, on request, to contact
5 that jurisdiction and request that jurisdiction to abide by the
6 immunity provisions of this agreement. And, as the agreement
7 notes, however, the parties understand - that is, the defendant
8 and the government understand - that the prosecuting
9 jurisdiction retains the discretion over which to use such
10 information.

11 Now, in order for you to satisfy your cooperation
12 obligation, Mr. Fitzpatrick, the plea agreement provides that it
13 is not conditioned on any charges being brought against any
14 individual. In other words, in order for you to satisfy your
15 cooperation obligation, it isn't necessary that someone be
16 caught, prosecuted, and convicted on the basis of information
17 that you provide. All that's necessary in order for you to
18 satisfy your cooperation obligation is for you to provide full,
19 complete, and truthful cooperation.

20 And the plea agreement also notes, as the law provides,
21 that it's within the government's sole discretion whether to
22 seek any departure from the applicable sentencing guideline
23 range pursuant to Section 5K1.1 of the sentencing guidelines, or
24 any reduction of sentence pursuant to Rule 35 of the Federal
25 Rules of Criminal Procedure.

1 In other words, if you cooperate with the government,
2 Mr. Fitzpatrick, as you're obligated to do, and you provide
3 information to the government that you think should be of
4 substantial assistance to the government, but the government
5 disagrees with your assessment of the value of that information
6 either because they don't believe it or because they don't --
7 they have it from other sources or they don't think it's
8 reliable, or for whatever reason they disagree with your
9 assessment, you can't force the government to bring a motion for
10 reduction of sentence. Because that's within the sole
11 discretion of the government, as the plea agreement notes.

12 And the plea agreement notes, if you violate any of the
13 terms of the plea agreement and the government seeks to be
14 released from its obligations, if the Court releases the
15 government from its obligations under the plea agreement, then
16 the government will be free to prosecute you for any offense it
17 knows about, including what is in the criminal information. And
18 in doing so, the government will be able to use against you all
19 of the information it's obtained from you, including the
20 statement of facts, and you will not be able to rely on any
21 statute, rule, or constitutional provision to suppress the use
22 of that information.

23 And the plea agreement finally notes that it's the
24 complete agreement between you and the government concerning
25 your plea of guilty, and that there aren't any other secret

1 arrangements or side arrangements concerning your plea, and that
2 you acknowledge that no threats, promises, or representations
3 nor agreements reached, other than those set forth in the plea
4 agreement, have been made. In other words, that you haven't
5 been coerced in any way.

6 **(END SEALED PORTION.)**

7 Now, Mr. Fitzpatrick, are those the terms of your plea
8 agreement with the government that I've summarized?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are all of the understandings that you have
11 with the government concerning your pleas of guilty in this case
12 contained in the plea agreement?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Has anyone made any other or different kind
15 of promise or assurance to you of any kind whatsoever in order
16 to persuade you to plead guilty, other than what's in the plea
17 agreement?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Now, you'll be sentenced under the law,
20 Mr. Fitzpatrick, that provides that the sentencing guidelines
21 are now advisory, not mandatory, as they once were. Have you
22 and Mr. Katz discussed how the sentencing guidelines applies to
23 your case?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Or might apply to your case? Do you

1 understand?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Now, you and the government have entered
4 into an agreement to make certain recommendations to the Court
5 as to how some of the guidelines might apply to your case. Do
6 you recall that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Now, do you understand that binds you and
9 it binds the government, but that agreement does not bind the
10 Court. I could reach a different result.

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you understand that the Court hasn't
13 yet determined what guideline range applies to your case with
14 respect...

15 (OFF THE RECORD.)

16 THE COURT: Do you understand that the Court has not
17 yet determined what guideline range applies to your case? Do
18 you understand that that must await the completion of a
19 presentence report, which I will order prepared, and you'll
20 receive a copy, as will Mr. Katz and the government. And you'll
21 have an opportunity to register your objections or corrections
22 to the report, and the government will as well. Do you
23 understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And then, if you and the government

1 disagree about the guideline calculations, I'll hold a hearing,
2 and at the conclusion of the hearing I will rule on those issues
3 before sentence is imposed. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And do you understand that even after I
6 determine what guideline range applies to your case, then, under
7 certain circumstances, the Court has the authority to impose a
8 sentence that is either less severe than the guideline range or
9 more severe than the guideline range, but never greater than the
10 statutory maximum for the offenses involved. Do you recall
11 that?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: And for Count I, the maximum was 15 years.

14 MR. KATZ: 10, Your Honor.

15 THE COURT: 10 years. For Count II, it was 10 years,
16 and for Count III it was?

17 MR. HAGHIGHAT: 20.

18 THE COURT: 20 years. Do you recall that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And if the sentence you ultimately receive,
21 Mr. Fitzpatrick, is more severe than the sentence you now expect
22 as you stand here this afternoon, you will still be bound by
23 your plea and your plea agreement, and you will have no right to
24 withdraw them. Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Fitzpatrick, you have an absolute right
2 to plead not guilty and to persist in that plea. And if you do
3 so, you have the right to a trial by jury. Do you understand
4 that?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Now, incident to your right to a trial by
7 jury, you have all of the following rights:

8 First, you would have the right to the assistance of
9 your counsel, Mr. Katz, throughout all phases of the proceedings
10 against you in this case.

11 Next, you would have the right, in the course of
12 selecting a jury, to strike 10 persons from a panel of
13 prospective jurors for whatever reason you choose, subject only
14 to the constitutional constraint that neither you nor the
15 government may strike any prospective juror solely for reasons
16 of race or gender.

17 Next, you would have the right to see and hear all
18 witnesses and all evidence against you, and to have those
19 witnesses and that evidence cross-examined by your attorney on
20 your behalf.

21 Next, you would have the right, Mr. Fitzpatrick, to
22 testify before the jury, or, if you decide, if you elect to
23 remain silent, you may do so. And if you elect to remain
24 silent, then the Court will instruct the jury that the jury may
25 draw no inference from your silence. Indeed, if you elect to

1 remain silent, the Court will instruct the jury that when the
2 jury retires to deliberate on its verdict, the jury may not even
3 discuss the fact that you have not testified, because your right
4 to remain silent is absolute under the Constitution, and you may
5 not be penalized for exercising that right.

6 Next, you cannot be found guilty on these charges, or
7 any one of them, unless all 12 members of the jury are unanimous
8 in concluding that the government has proved beyond a reasonable
9 doubt each and every element of the offense charged against you
10 in this case.

11 And finally, Mr. Fitzpatrick, you would be entitled, as
12 I said, not to be found guilty unless the government has proved
13 beyond a reasonable doubt each and every element of the offense
14 charged against you. Do you understand all of that?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: And do you understand that by pleading
17 guilty, you give up all those rights I've listed and there will
18 be no trial at all?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: So to be more specific, Mr. Fitzpatrick,
21 with respect to Count I, if you persist in a plea of not guilty
22 with respect to Count I of the criminal information, the
23 government would have to prove, first of all, that there was a
24 conspiracy.

25 Now, in order to prove a conspiracy, the government

1 doesn't have to prove that you and others had written agreements
2 about what you were going to do, or even that you had detailed
3 oral agreements about what you were going to do. But what the
4 government must prove beyond a reasonable doubt is that you and
5 at least one other person had some kind of understanding or
6 arrangement, the purpose of which was to traffic in or with
7 intent to defraud to traffic in, to use one or more unauthorized
8 access devices during a one-year period; or knowingly and with
9 intent to defraud solicit a person for the purpose of selling
10 unauthorized access devices, to wit, payment card data, bank
11 routing, et cetera; or, third, that you knowingly and falsely
12 registered false domain names.

13 So the government would have to prove that you and at
14 least one other person had some kind of understanding or
15 arrangement, the purpose of which, the goal of which was either
16 access device fraud, as I mentioned it to you, or falsely
17 registering domain names. Do you understand that?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: And then the government would have to prove
20 with respect to that count also that you did this knowingly, not
21 accidentally, inadvertently, or by accident, but you did it
22 deliberately and knowing what you were doing.

23 The government would also have to prove that with
24 respect to the access online accounts and so forth, and the
25 access devices, that the government would have to prove that it

1 affected interstate and foreign commerce as well.

2 Do you understand that?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: And do you understand that by pleading
5 guilty, you give up the right to compel the government to prove
6 all of that beyond a reasonable doubt?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: Now, with respect to -- well, let me ask
9 you, with respect to Count I, did you do what's alleged in
10 Count I, Mr. Fitzpatrick?

11 THE DEFENDANT: I did, Your Honor.

12 THE COURT: Tell me in your own words what you did with
13 respect to Count I. Tell me about what arrangement or
14 understanding you had with others to accomplish the objects in
15 Count I.

16 MR. KATZ: If we could have just one second,
17 Your Honor.

18 THE COURT: Yes, you may.

19 (OFF THE RECORD.)

20 THE DEFENDANT: Could you repeat the question,
21 Your Honor?

22 THE COURT: Yes. Tell me in your own words what you
23 did with respect to Count I. That is, tell me what arrangements
24 or understandings you had with others to accomplish the objects
25 of the conspiracy in Count I.

1 THE DEFENDANT: I helped someone --

2 THE COURT: A little louder, please.

3 THE DEFENDANT: I helped someone sell data that I
4 wasn't authorized to.

5 THE COURT: You helped someone sell data. What data?

6 THE DEFENDANT: I don't remember exactly, Your Honor.

7 THE COURT: Well, what was the nature of the data?

8 THE DEFENDANT: Financial data, Your Honor.

9 THE COURT: So did it involve credit cards and
10 Social Security numbers, log-in credentials?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All of the above?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Passwords and usernames?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And did you help or participate in falsely
17 registering domain names?

18 THE DEFENDANT: I did, Your Honor.

19 THE COURT: Did those involve the breached and
20 breached.com and .net and all of those?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, with respect to Count II,
23 Mr. Fitzpatrick, the government would have to prove that from
24 on -- let me go back to Count I.

25 When did you engage in this conduct? During what

1 period of time?

2 THE DEFENDANT: March '22 to March 2023, Your Honor.

3 THE COURT: And where were you when you committed or
4 when you performed these acts?

5 THE DEFENDANT: Peekskill, New York.

6 THE COURT: I didn't hear that.

7 THE DEFENDANT: Peekskill, New York.

8 THE COURT: All right. And were any of the
9 co-conspirators in Virginia?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: What's the contact with Virginia, then?

12 MR. HAGHIGHAT: Your Honor, through the website they
13 sold data to undercover officers in the Eastern District of
14 Virginia.

15 THE COURT: And is that true?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Now, with respect to Count II, the
18 government in that case, Mr. Fitzpatrick, would have to show
19 that from on -- that this conduct occurred from June of 2022 to
20 about July 6, 2022. And the government would have to show that
21 you knowingly, with intent to defraud, did aid and abet
22 solicitation of a person for the purpose of offering
23 unauthorized access devices.

24 Did you do that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Tell me what you did.

2 THE DEFENDANT: I helped initiate a trade where an
3 undercover agent bought data off the website.

4 THE COURT: Now, you understand that, as I said with
5 respect to Count I, that the government would have to prove
6 beyond a reasonable doubt, and then I asked you whether you
7 actually did it. Do you recall that?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Now, with respect to Count II, the
10 government would have to prove that you knowingly and with
11 intent to defraud -- in other words, they would have to show
12 that you didn't do this accidentally or inadvertently or by a
13 mistake, but you did it deliberately, knowing what you were
14 doing, that you intended to defraud by soliciting a person for
15 the purpose of offering unauthorized access devices.

16 Do you understand the government would have to prove
17 all of that beyond a reasonable doubt?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you understand that by pleading guilty,
20 you're giving up the right to compel the government to prove all
21 of that beyond a reasonable doubt?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Did you do that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Tell me what you did in your own words.

1 THE DEFENDANT: For Count II, Your Honor?

2 THE COURT: Yes.

3 THE DEFENDANT: The same thing as Count I, Your Honor.

4 MR. KATZ: One second. Sorry, Judge, if I could have
5 just one second.

6 THE DEFENDANT: I sold data to an undercover agent.

7 THE COURT: And did that happen between June of 2022
8 and July of 2022?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Now, with respect to Count III,
11 Mr. Fitzpatrick, the government -- if you persist in a plea of
12 not guilty, the government would have to prove beyond a
13 reasonable doubt that you possessed and attempted to possess
14 child pornography, that is, that you had possession of visual
15 depictions that had been transported in interstate commerce and
16 foreign commerce, that is, by using a computer that involved
17 depictions of a minor -- minors engaged in sexually explicit
18 conduct. And the government would have to prove all of that
19 beyond a reasonable doubt.

20 And that includes that the government would have to
21 prove that the images were of minors. In other words, they
22 can't be computer-generated images, they have to be actual
23 images. And the government would have to prove that, and it has
24 to prove that you possessed and attempted to possess these
25 matters beyond a reasonable doubt.

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And that you used a computer.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you understand that by pleading guilty,
6 the government will not have to prove that beyond a reasonable
7 doubt?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Did you do what's charged in Count III,
10 Mr. Fitzpatrick?

11 THE DEFENDANT: I did, Your Honor.

12 THE COURT: Tell the Court in your own words what you
13 did with respect to Count III.

14 THE DEFENDANT: Downloading the images and videos off
15 the internet.

16 THE COURT: And what did those videos have on them?
17 What did they depict?

18 THE DEFENDANT: Child pornography, Your Honor.

19 THE COURT: And what do you understand child
20 pornography to be?

21 THE DEFENDANT: Persons under the age of 18. Children
22 under the age of 12, Your Honor.

23 THE COURT: And these would be children under the age
24 of 12 engaged in sexually explicit conduct?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Mr. Fitzpatrick, you may be
2 seated now. I'm going to have the government tell the Court
3 what the government would prove were this matter to go to trial.
4 Now, listen carefully to what Mr. Haghighat says, because when
5 he's finished, I'll have you return to the podium and tell me
6 whether what he has said is true and accurate in all respects.

7 MR. HAGHIGHAT: Your Honor, we have a 14-page statement
8 of facts, and we've also prepared a somewhat shorter summarized
9 version. Which would you prefer that we read out today?

10 THE COURT: Well, it depends on how good your summary
11 is, doesn't it?

12 MR. HAGHIGHAT: Okay. Well, if it's okay with
13 Your Honor, let me try the summary, and then if you feel as if
14 we've left something out, we can revisit the full version. It's
15 still not that abbreviated, the summary.

16 THE COURT: Go ahead.

17 MR. HAGHIGHAT: Okay. Thank you, Your Honor.

18 The United States and the defendant, Conor Brian
19 Fitzpatrick (a/k/a Pompompurin) agree that had this matter
20 proceeded to trial, the United States would have proven the
21 facts set forth in the statement of facts beyond a reasonable
22 doubt with admissible and credible evidence.

23 For the sake of brevity, I'll summarize some of the
24 statements here today.

25 The defendant is a 20-year-old citizen of the

1 United States who resides in Peekskill, New York.

2 In March 2022, the defendant, using the online moniker
3 "Pompompurin," created a data breach website named "breached,"
4 that later became widely known as BreachForums, to serve as a
5 replacement for another prominent English-language data breach
6 forum that had been seized by law enforcement. From at least
7 March 2022 through March 15, 2023, the defendant controlled and
8 acted as a lead administrator of BreachForums with the
9 assistance of others, including an evolving staff of moderators.

10 I'll begin with an overview of BreachForums.

11 While active, BreachForums operated as an illegal
12 marketplace where its members could solicit for sale, sell, and
13 purchase and trade hacked or stolen data and other contraband,
14 including stolen access devices, tools for committing cyber
15 crime, breached databases, and other services for gaining
16 unauthorized access to victims' systems.

17 Among other things, BreachForums enabled its members to
18 post solicitations concerning the sale of hacked or stolen data,
19 exchange direct private messages with prospective buyers and
20 sellers, buy access to certain hacked or stolen data that the
21 platform itself controlled and relating to other services
22 related to the illicit transfer of stolen data and contraband.

23 The purpose of BreachForums, and the defendant's intent
24 in operating the forum, was to commit and aid and abet the
25 trafficking of stolen or hacked databases containing, among

1 other things, access devices and the posting of solicitations to
2 offer databases containing access devices. In particular, the
3 defendant intentionally ran BreachForums in a manner that made
4 it an attractive marketplace for cyber criminals to frequent in
5 an effort to buy, sell, or trade stolen or hacked access
6 devices.

7 At all relevant times, the defendant knew and
8 understood that the access devices that BreachForums possessed
9 and helped to traffic were stolen or obtained with the intent to
10 defraud, as defined in 18 U.S.C. Section 1029(e) (3).

11 An individual could access the BreachForums website
12 without a membership. However, the website required an
13 individual to sign up for a membership to solicit items for sale
14 or purchase items. BreachForums offered tiers of membership
15 options, including a "God" membership that offered almost
16 unlimited access to the BreachForums website and features.

17 BreachForums included a "Marketplace" section that was
18 dedicated to the buying and selling of hacked and stolen data,
19 tools for committing cyber crime, and other illicit material,
20 including a "Leaks Market" subsection. Some of the items that
21 were often sold in this section included bank account
22 information, Social Security numbers, other personal identifying
23 information or PII, and log-in information for compromised
24 online accounts such as usernames and passwords to access
25 accounts with service providers and merchants. Paragraph 11 of

1 the statement of facts highlights several examples of
2 solicitations that offered substantial volumes of PII.

3 In addition, to facilitate transactions amongst
4 BreachForums members, the defendant offered a middleman service
5 in which he acted as a trusted middleman or escrow between
6 individuals on the website who sought to buy and sell
7 information. The defendant's middleman service substantially
8 facilitated and encouraged the dissemination of hacked or stolen
9 data through BreachForums because it enabled purchasers and
10 sellers to verify the means of payment and contraband files sold
11 prior to executing the purchase and sale. The defendant's
12 standardized middleman process required members to notify him of
13 the product they sought to trade.

14 BreachForums further managed a section titled
15 "Official," which was described on their website as, and I'm
16 quoting here, "forum where databases stored on our own servers
17 are kept." Official databases were available for purchase on
18 BreachForums' content distribution network, or CDN, through a
19 credit system that the website administered. Credits were
20 available for purchase on the website or earned through
21 contributing content. BreachForums members seeking to post
22 databases to the official CDN were required to contact the
23 defendant directly, and the defendant personally approved the
24 upload of databases to the CDN.

25 As of March 27, 2023, the "Official" section purported

1 to contain 880 datasets consisting of over 14 billion individual
2 records. These databases included a wide variety of both U.S.
3 and foreign companies, organizations, and government agencies.

4 BreachForums had approximately 333,412 members as of
5 March 14, 2023. It was the largest English-language data breach
6 forum of its kind at the time it went offline.

7 I'll now shift to summarizing the defendant's conduct.
8 The defendant's responsibility in the conspiracy included
9 designing and administering BreachForums' software and computer
10 infrastructure, establishing and enforcing the website's rules,
11 creating and managing sections of the website dedicated to
12 promoting the buying and selling of stolen data, operating a
13 middleman service, approving and uploading breached databases to
14 BreachForums' official CDN, and providing additional assistance
15 to BreachForums members seeking to buy and sell illicit
16 material, including by investigating and sometimes vouching for
17 the authenticity of stolen data.

18 As part of the administration of BreachForums, the
19 defendant also registered a large volume of domains to host or
20 provide access to the BreachForums website. To obscure his
21 identity, the defendant registered these domains in a manner
22 that prevented the effective identification of him as the person
23 who registered them.

24 The defendant also hired and managed a staff of
25 moderators that helped to ensure BreachForums operated properly

1 and performed traditional administrative functions such as
2 transmitting messages to warn members of conduct that violated
3 BreachForums' rules. The defendant compensated staff members
4 for acting as moderators.

5 The defendant and co-conspirators gained at least
6 \$698,714 through the relevant conduct alleged in Counts I and II
7 of the criminal information.

8 I'll now move to overt acts. The statement of facts
9 describes a series of overt acts by the defendant, including
10 particular posts announcing the process for uploading data to
11 BreachForums' official CDN and for using his middleman service
12 to conduct transactions.

13 In addition, Paragraphs 23 through 35 detail an example
14 of a customer database from a U.S.-based internet hosting and
15 security services company, defined as Victim-1, that the
16 defendant approved and caused to be uploaded to BreachForums'
17 official CDN. That solicitation was observed by an FBI online
18 covert employee, or OCE, in the Eastern District of Virginia,
19 who then purchased and downloaded the database into the
20 district.

21 The data included, among other things, customer
22 usernames, password hashes, and credit card information, to
23 include card number, expiration date, and card verification
24 value.

25 Paragraphs 27 through 33 of the statement of facts also

1 describe two examples of transactions that the defendant helped
2 to middleman or facilitate. In one instance, from July 2022,
3 the defendant middle-manned a transaction between a user,
4 Expo2020, and an FBI OCE in the Eastern District of Virginia in
5 which the OCE paid approximately \$5,000 to the user to purchase
6 the PII, including Social Security information and bank account
7 information of approximately 50 million U.S. persons. This
8 solicitation also serves as the basis for the substantive
9 offense charged in Count II.

10 In another instance from August 2022, the defendant
11 middle-manned a transaction between an FBI OCE in the
12 Eastern District of Virginia and another user named Jigsaw in
13 which Jigsaw sold the FBI credentials for accessing a
14 U.S. health care company accounting system and a sample file
15 that was obtained from the company's accounting system. The
16 sample data included, among other things, driver's license
17 photos, insurance cards, and the last four digits of credit
18 cards for approximately 13 individuals.

19 In both transactions, the defendant middle-manned the
20 deals after being told by the FBI OCE about the nature of what
21 was being purchased, and of the OCE's claimed plans to use the
22 data or access to conduct financial scams or to obtain money.

23 Further, as explained in more detail in Paragraphs 37
24 through 42, the defendant knowingly possessed approximately 26
25 files in two folders containing visual depictions of minors

1 engaged in sexually explicit conduct on a Samsung 870 QVO
2 4-terabyte solid state driver, SSD. The defendant used a
3 Samsung SSD with his Dell Inspiron 5593 laptop computer. These
4 devices were seized from the defendant's home in New York on
5 March 15, 2023, pursuant to a federal search warrant.

6 Many of the 26 files expressly reference names or
7 phrases indicative of child pornography. In addition, one file
8 named "girl_hebephilia" in the title, and depicted two
9 prepubescent females who, during the video, exposed their
10 genitals to the camera and masturbated. Forensic artifacts show
11 that the defendant opened this file after he saved it.

12 The Dell Inspiron 5593 laptop computer and the Samsung
13 SSD were manufactured outside the State of New York, and thus,
14 at the time of seizure, had been shipped or transported in
15 interstate or foreign commerce.

16 The actions of the defendant as recounted here were in
17 all respects knowing, voluntary, and intentional, and were not
18 committed by mistake, accident, or other innocent reasons.

19 THE COURT: All right. Mr. Fitzpatrick, return to the
20 podium, please, sir.

21 Was that recitation of facts by the prosecutor true and
22 accurate in all respects?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: When I reviewed with you what you did with
25 respect to Count I, how many -- I'm just curious, how many

1 people were involved in BreachForums?

2 THE DEFENDANT: The website had around 300,000 users.

3 THE COURT: All right. About 300,000?

4 MR. KATZ: If I may, Your Honor, just to make the
5 record clear, are you asking about people who were involved in
6 facilitating BreachForums or members of the forum?

7 THE COURT: Both. Is it a different number?

8 MR. KATZ: Yes, Judge.

9 (OFF THE RECORD.)

10 THE DEFENDANT: In total there were probably about
11 300,000 people registered on the website, and about five or six
12 people that helped manage the website, Your Honor.

13 THE COURT: All right. So the five or six people that
14 helped manage the website were your closest conspirators. Is
15 that right?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Where were they located?

18 THE DEFENDANT: I'm not sure, Your Honor.

19 THE COURT: Because you communicated with them only on
20 the internet?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. I've asked you whether you find
23 that the prosecutor's summary of the facts was true and
24 accurate. And what was your answer?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Mr. Fitzpatrick, how do you now
2 plead to the offense charged against you in Count I of the
3 information; that is, conspiracy -- engaging in a conspiracy to
4 commit access device fraud? Do you plead guilty or not guilty?

5 THE DEFENDANT: Guilty, Your Honor.

6 THE COURT: The Court in the case of United States
7 against Conor Brian Fitzpatrick finds that the defendant is
8 fully competent and capable of rendering an informed plea, that
9 your plea of guilty is knowing and voluntary, and that it is
10 supported by an independent basis in fact containing each of the
11 elements charged against you. And accordingly, I adjudge you
12 now guilty of engaging in a conspiracy to commit access device
13 fraud.

14 Now, how do you plead now to the charge against you in
15 Count II; that is, unauthorized solicitation of a person for the
16 purpose of offering unauthorized access devices? Do you plead
17 guilty or not guilty?

18 THE DEFENDANT: Guilty, Your Honor.

19 THE COURT: The Court in the case of United States
20 against Conor Brian Fitzpatrick finds that the defendant is
21 fully competent and capable of entering an informed plea, and
22 that your plea of guilty to Count II of the information - that
23 is, access device fraud, unauthorized solicitation - is knowing
24 and voluntary, and the Court accepts your plea and adjudges you
25 now guilty of engaging in access device fraud and unauthorized

1 solicitation as alleged in Count II of the information.

2 Now let me turn to Count III. You told me that you --
3 that the summary of the prosecutor of the facts relating to
4 Count III was true and accurate in all respects. So how do you
5 now plead to the charge against you in the information of
6 possessing child pornography? Do you plead guilty or not
7 guilty?

8 THE DEFENDANT: Guilty, Your Honor.

9 THE COURT: The Court in the case of United States
10 against Conor Brian Fitzpatrick finds that the defendant is
11 fully competent and capable of entering an informed plea, and
12 that his plea of guilty to Count III of the information is a
13 knowing and voluntary plea, and that plea is supported by an
14 independent basis in fact containing each of the elements of the
15 offense. And accordingly, the Court accepts your plea and
16 adjudges you now guilty of possession of child pornography as
17 alleged in Count III in the information.

18 Mr. Fitzpatrick, the Court will order the preparation
19 of a presentence report. This is a vitally important document
20 because it's a document on which the Court will chiefly rely in
21 imposing an appropriate sentence. So you should pay careful
22 attention to the preparation of this document, and indeed you
23 have a role to play in its preparation.

24 You'll be asked by a probation officer to provide
25 information so that the report can be prepared, information

1 about your family, your background, your education, your work
2 experience, your version of the offense conduct, and indeed
3 anything else that might be material in any way to the Court's
4 sentencing decision. And you may have your counsel with you
5 when you provide that information to the probation officer.

6 When the report is completed, Mr. Fitzpatrick, you'll
7 receive a copy. So will Mr. Katz. And you'll have an
8 opportunity to call to the Court's attention any objections or
9 corrections you have to the facts, conclusions, or calculations
10 contained in the presentence investigation report. The
11 government will also have an opportunity to register its
12 objections or corrections. And if you dispute those offered by
13 the government or the government disputes those objections or
14 corrections that you offer, then the Court will hold a hearing
15 and resolve the dispute before imposing sentence.

16 At the time of sentencing, Mr. Fitzpatrick, you'll have
17 the right to address the Court, to say anything at all you wish
18 to the Court by way of extenuation, mitigation, or indeed
19 anything you think the Court should know before sentence is
20 imposed. You won't be required to address the Court, but you
21 will have the opportunity to do so if you wish to. And, of
22 course, Mr. Katz will also be afforded the opportunity to
23 address the Court on your behalf.

24 I'll set sentencing for November 17th at 9 a.m. Is
25 that date available?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Mr. Katz?

3 MR. KATZ: Yes, I believe so, Your Honor. I apologize,
4 I don't have my calendar with me, but I think that date will
5 work.

6 THE COURT: And of course the government is available
7 that day.

8 You may be seated, Mr. Fitzpatrick.

9 Is he currently on conditions?

10 MR. HAGHIGHAT: Yes, Your Honor.

11 THE COURT: What are they? And does the government
12 seek confinement?

13 MR. HAGHIGHAT: No, we are not seeking detention,
14 although we do want changes to his conditions. So I believe
15 probation has sent a request for bond modification relating to
16 monitoring of electronic devices that he uses. I believe that
17 was sent to the Court. We also have submitted certain
18 particular restrictions as well to add to what
19 Magistrate Judge Fitzpatrick previously imposed.

20 I'm not sure if that has made it to the Court yet, but
21 we have a few additional restrictions that we discussed with the
22 defense that we would like to impose.

23 THE COURT: I don't have those. Let me look. Just a
24 moment.

25 Is the probation officer present in the courtroom?

1 THE PROBATION OFFICER: Yes, Judge.

2 THE COURT: The only additional condition that I'm
3 aware of is the one on page 3 of what you submitted to me,
4 "Defendant shall not access a computer and/or the internet
5 unless a computer monitoring program has been installed by
6 Pretrial Services Office," and so on.

7 Is that the only one?

8 THE PROBATION OFFICER: Yes, Judge. And I didn't
9 realize until today there was a third count of the child
10 pornography. Our understanding was it was access device fraud.

11 So because of that third count, Judge, we would also
12 recommend that, as we normally do in child pornography cases,
13 the no contact with minors under age of 18 unless there's a
14 suitable adult present, and also no access to any video gaming
15 console or smart phone unless the computer monitoring is
16 installed.

17 THE COURT: All right. Mr. Katz, any objection to
18 those?

19 MR. KATZ: No. Our understanding is that any device
20 that Mr. Fitzpatrick will access will be monitored. We have no
21 objection to that.

22 THE COURT: All right. I think that's what was
23 recommended.

24 All right. Mr. -- yes?

25 MR. HAGHIGHAT: So we have three additional conditions

1 that would restrict what he does online that we would like to
2 have entered. I think my colleague sent it to probation
3 yesterday, but it didn't make it to the Court, it seems. We
4 have an email, written-out version, which I could show
5 Your Honor.

6 THE COURT: You have a what?

7 MR. HAGHIGHAT: An email that we sent that writes out
8 the conditions. Or I could read it out loud.

9 THE COURT: You didn't send an email to me because I
10 don't allow that and I don't have an email address.

11 MR. HAGHIGHAT: Yes, Your Honor. We sent it to
12 probation, which I don't think has made it to you.

13 THE COURT: Well, we need to have an organized way of
14 being clear about the conditions.

15 So what I'm going to do is I'm going to list all the
16 conditions I'm going to impose on Mr. Fitzpatrick. I am going
17 to allow him to remain on conditions, and I'm going to state
18 them all. At the end of that I will ask you first whether you
19 have any additional conditions, then I will ask the defendant
20 whether he objects to anything I've read. And then we'll deal
21 with it that way. But I'm going to impose the conditions and
22 I'm going to do it orally.

23 All right. First of all, I'm going to impose a
24 personal appearance bond of \$300,000. Now, Mr. Fitzpatrick,
25 that doesn't mean you have to post any money in order to remain

1 free, but it means that if you violate any of the conditions of
2 supervised release, you'll be immediately arrested, of course,
3 but you'll also be indebted to the government in that sum. And
4 that was previously imposed by the magistrate judge, as I'm
5 advised. But I want to reimpose that.

6 He will be subject to pretrial services supervision.
7 He may not obtain a new passport, and he has to surrender -- do
8 you have a passport, Mr. Fitzpatrick?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: All right. You may not obtain any new
11 passport or travel documents. Your travel is going to be
12 restricted to the Southern District of New York and the
13 Eastern District of New York, which is really Manhattan,
14 Staten Island, Long Island, I've forgotten where else. But it
15 doesn't involve the capital of New York.

16 MR. KATZ: That's correct, Judge. It involves all the
17 counties in New York City, Long Island, as you mentioned, as
18 well as some northern counties of Rockland, Orange, and Dutchess.

19 THE COURT: All right.

20 MR. KATZ: I'm sorry, Judge, if I may. As far as --

21 THE COURT: I said the Southern District of New York,
22 the Eastern District of New York, and the Eastern District of
23 Virginia. Aren't those covered by what you've said?

24 MR. KATZ: Yes. I was just -- you asked about what was
25 included in the Southern District. I just wanted to let you

1 know which counties --

2 THE COURT: They're all in the Southern or
3 Eastern District?

4 MR. KATZ: Correct, Judge.

5 THE COURT: And the Eastern District of Virginia, which
6 includes this Eastern District. It does not include Maryland,
7 it does not include West Virginia, and it does not include
8 Western Virginia. He's limited because he has counsel here.
9 Ms. Ginsberg is his counsel, so he may be traveling here to see
10 her. He certainly may do that.

11 Here we are. I have it. I see what you mean.
12 Duchess, Sullivan, Orange, Rockland, Westchester, and then all
13 of the counties in Manhattan, Statten Island, Queens, and so
14 forth. And Long Island, Nassau, and Suffolk.

15 All right. Let me continue. He may not have any
16 contact with victims, witnesses, co-defendants, or
17 co-conspirators. No, that's a fairly vague restriction. How is
18 that going to be enforced? I don't have a list. Do we have a
19 list of witnesses, victims, and co-defendants? The answer is
20 no.

21 MR. HAGHIGHAT: Well, there is a list of BreachForums'
22 users.

23 THE COURT: Yes.

24 MR. HAGHIGHAT: So there is a discrete list. We
25 haven't provided it to the Court --

1 THE COURT: How can this be enforced without that? The
2 answer is, it can't.

3 MR. HAGHIGHAT: Well, certainly we could provide the
4 list, if that is something the Court would prefer. But I
5 think --

6 THE COURT: Well, it isn't something that I prefer.
7 He's going to be allowed to be free pending sentencing. That
8 gives the Court the authority to impose restrictions on his
9 freedom. The purpose of those restrictions is, first of all, to
10 ensure he doesn't commit any more crimes, and, second, it is to
11 ensure the integrity of any prosecution or ongoing investigation
12 or anything of that sort.

13 I don't make these up. I listen to what the parties
14 suggest and then decide whether to impose them. The only
15 problem I have with that one is, I don't know how it's
16 enforceable if these people are not identified. In many cases I
17 know who the witnesses and co-conspirators are, and I can tell
18 them: You can't talk to John, you can't do this. But I have a
19 hard time knowing that about this.

20 MR. HAGHIGHAT: Your Honor, in this context it would be
21 based on online monitors that people use on BreachForums, and
22 that's how Mr. Fitzpatrick knows them.

23 THE COURT: All right. Well, then, if that's what
24 you're going to rely on, then he can't use a computer unless
25 it's monitored. And if he uses a computer that's monitored and

1 that monitoring reflects that he's talking to somebody you think
2 he shouldn't talk to, then you have to come to court.

3 MR. HAGHIGHAT: Yes, Your Honor.

4 THE COURT: Or deal with Mr. Katz.

5 MR. HAGHIGHAT: Yes, Your Honor. And I think that's
6 one of the conditions that --

7 THE COURT: I will leave no contact with any victims,
8 witnesses, co-defendants, or co-conspirators, but I leave it
9 knowing that it is in some respects fatally vague.

10 On the pornography side, many of these images are of
11 young people who are now adults. Some of them aren't. Some of
12 them are identified. He can't have contact with any of them.
13 But I assume that you will monitor his use of any computer such
14 that you will know.

15 I'm going to leave that in here, but -- and I will tell
16 you, Mr. Fitzpatrick, you can't talk to any co-conspirators, you
17 can't talk to people that you used to communicate with to commit
18 these crimes. You cannot do it. And you cannot talk to any
19 victims, either, of any of the crimes.

20 So I am going to impose that, but I have disclosed that
21 I'm concerned about how that can be effected.

22 Next, submit to mental health testing, treatment as
23 directed by pretrial services. That's okay. Not use or
24 unlawfully possess a narcotic drug or other controlled
25 substance. That's fine. Unless prescribed by a licensed

1 medical practitioner.

2 Not to possess any personal identification information
3 of others, including at any place of employment. Is he
4 employed, Mr. Katz?

5 MR. KATZ: No, Your Honor.

6 THE COURT: All right. But if he goes to be employed,
7 he can't do anything on those computers unless they're
8 monitored. And he can't use the personal information of others.

9 He can't open new lines of credit, bank accounts,
10 crypto currency accounts, and credit card accounts without prior
11 approval. I'll maintain that one.

12 Maintain or actively seek employment or enroll in an
13 educational or vocational program. Does he intend to do that,
14 Mr. Katz?

15 MR. KATZ: Your Honor, based upon his treatment thus
16 far, that hasn't been practicable. But he certainly will if
17 he's capable.

18 THE COURT: Well, it's a condition here, so he has to
19 do it. But I think I'll change it to say, at the discretion of
20 the probation office or pretrial officer he has to maintain or
21 actively seek employment.

22 And, of course, he cannot access the BreachForums
23 website or any related websites. And he shall have no knowing
24 contact with BreachForums users or co-conspirators unless
25 supervised by counsel. Which counsel?

1 Is that you, Mr. Katz? Do you anticipate he will be
2 doing that?

3 MR. KATZ: He will not, Judge.

4 THE COURT: Yes. I don't know why that condition is
5 here. I think it's already covered in, "he shall have no
6 contact with any victims, witnesses, co-defendants, or
7 co-conspirators," period. And if there's any doubt about
8 whether someone falls into that category by either you,
9 Mr. Katz, or by the government, you-all need to address that
10 promptly.

11 MR. HAGHIGHAT: Your Honor, I think there were
12 conditions imposed by the magistrate in the Southern District of
13 New York and then additional conditions imposed by
14 Judge Fitzpatrick here. I think that's why there are two lines.
15 I think the point of the second one is to make it clear, when we
16 say co-conspirators, we're referring to BreachForums users.

17 THE COURT: All right. I'll leave that one. And I'm
18 going to add the condition that the probation office has
19 recommended; that is, that he shall not access a computer and/or
20 the internet unless a computer monitoring program has been
21 installed by the pretrial services office.

22 That means he can't go on the internet unless he does
23 so on a device that is monitored. He shall consent to the
24 installation of computer monitoring software on any computer to
25 which he has access, and the pretrial services officer will do

1 that and supervise that. And the software used may restrict
2 and/or record any and all activity on the computer, including
3 the capture of keystrokes, application information, internet use
4 history, email correspondence, and chat conversations.

5 And this condition also includes that the defendant
6 shall not remove, tamper with, reverse engineer or in any way
7 circumvent the software. And the cost of monitoring is imposed
8 on the defendant.

9 MR. KATZ: If I may, Judge, with regard to the
10 monitoring, we have no problem with that. As I think was
11 mentioned earlier, Mr. Fitzpatrick is going through -- is going
12 to therapy. That is a virtual therapy that he uses a computer
13 for, and I just wanted to confirm in court that monitoring will
14 not actually record his sessions with his mental health
15 treatment.

16 THE COURT: Do you agree with that, counsel?

17 MR. HAGHIGHAT: Your Honor, we don't disagree. It
18 depends, I guess, on what device they want to use for the
19 monitoring.

20 THE COURT: You're not talking to a sophisticated
21 person here on the use of these devices. He gets counseling,
22 mental health counseling. Is that right?

23 MR. KATZ: Correct, Your Honor.

24 THE COURT: And is that done live or does he do that by
25 the internet?

1 MR. KATZ: Internet.

2 THE COURT: And what does he use in order to
3 participate in these counseling efforts on the internet?

4 MR. KATZ: A computer. And he will use only the
5 computer that is subject to monitoring, pursuant to Your Honor's
6 order.

7 THE COURT: There you have it.

8 MR. KATZ: But my question is -- not question. My
9 request is, because he's going through mental health treatment
10 on that device, I just wanted to confirm with the government and
11 with probation that the monitoring does not actually observe him
12 during his mental health treatment on the internet; that it only
13 records where he went, not the substance of his conversations
14 during his mental health treatment.

15 THE COURT: All right. What's the government's view on
16 that?

17 MR. HAGHIGHAT: I don't have an objection to that as
18 long as it's practicable for probation.

19 THE COURT: Let me ask the probation officer. In other
20 words, he's going to get counseling via the internet on a device
21 that will be monitored.

22 THE PROBATION OFFICER: Yes, Your Honor.

23 THE COURT: But his counsel has argued that his
24 interaction with his treatment providers won't be accessed.
25 What you will have access to is when he does it, to whom he's

1 doing it with, and how he's doing it?

2 THE PROBATION OFFICER: That's correct, Your Honor.

3 THE COURT: You won't have access to the substance of
4 the questions he's asked and the answers he gives. That's what
5 you're saying. Is that right?

6 MR. KATZ: Correct, Your Honor.

7 THE PROBATION OFFICER: Yes, Your Honor. The computer
8 monitoring simply monitors -- just accesses the websites where
9 he's gone to. But his sessions with his therapists won't be
10 recorded, it will just show that he accessed the website where
11 he's going. That's all the computer monitoring does, is access
12 websites he's going to.

13 THE COURT: All right.

14 MR. KATZ: We have no objection to that, Your Honor.

15 MR. HAGHIGHAT: That's fine, Your Honor.

16 THE COURT: All right. Any other conditions I should
17 impose on the defendant?

18 MR. HAGHIGHAT: Yes, Your Honor. So we have three that
19 we've talked to defense counsel --

20 THE COURT: Let's finish with the probation officer.

21 What about the child pornography? You wanted an
22 additional one that says he has no contact with any minors --

23 THE PROBATION OFFICER: With any minors, unless he's
24 with another adult that's been approved by pretrial services or
25 probation.

1 MR. KATZ: Your Honor, if I may, he does have a sibling
2 under that age. I just ask that his sibling not be included on
3 that list.

4 THE COURT: He has a sibling under age 18 who lives
5 with him?

6 MR. KATZ: Yes, Judge.

7 THE COURT: Should we exclude that?

8 THE PROBATION OFFICER: I think that's okay,
9 considering he's living with his parents, I believe.

10 THE COURT: Well, do his parents know about the child
11 pornography possession crime?

12 MR. KATZ: Yes, Your Honor. His father is in court
13 today, and I know also that his mother is very well aware of it.

14 THE COURT: All right. Well, then, presumably he won't
15 have any unsupervised contact with his sibling other than --
16 that his parents won't know about, is what I'm getting at.

17 MR. KATZ: That's right. They all live in the same
18 house, Your Honor. I don't want it to be a situation where his
19 parents leave the house, he's with his brother, and that's
20 somehow a violation of his supervised release.

21 THE COURT: But I think it is a condition that he not
22 have any contact with other minors unless it's supervised by an
23 adult who is knowledgeable about the offense and so forth.

24 MR. KATZ: And that would include his parents. His
25 parents are aware of the situation.

1 THE COURT: Yes. Yes, of course he may have contact
2 with his parents. The parents aren't minors.

3 MR. KATZ: No. I'm sorry, Your Honor, what I meant
4 was, his parents could be the adults who could supervise that
5 type of conduct. They're aware of the charges, they're aware of
6 his plea, and they're aware of the situation.

7 THE COURT: Yes. Yes, I agree with that.
8 Is that a problem with probation?

9 THE PROBATION OFFICER: No, Your Honor.

10 THE COURT: Anything else? Let's go back to the
11 government.

12 MR. HAGHIGHAT: Yes, Your Honor. So the first
13 condition, the defendant shall not access any websites or
14 accounts focused on breached, leaked, or stolen data, computer
15 hacking, security research, malware, computer programming,
16 domains, cyber crime, online obfuscation, or computer
17 networking, without prior approval of probation.

18 THE COURT: All right. Just a moment.

19 (OFF THE RECORD.)

20 THE COURT: Go ahead. Next.

21 MR. HAGHIGHAT: With regard to that, the one difference
22 between my email and what I just read is defense asked that we
23 change it from "relating to," and then that long list of
24 "focused on," to avoid confusion about whether he could read,
25 like, CNN.com, where there may be some news about something like

1 this.

2 The second condition, the defendant shall not use any
3 tools for obfuscating his identity, such as virtual private
4 networks, or VPNs, the onion router, or Tor, or proxies.

5 Shall I go to the next condition?

6 THE COURT: No, stop there. Any objection to that one?

7 MR. KATZ: No objection to either of the first two, as
8 was just related to the Court.

9 THE COURT: All right. Next. And I'll adopt those and
10 include those.

11 MR. HAGHIGHAT: Thank you, Your Honor.

12 The third is, the defendant shall not create, register,
13 or rent any new websites, domains, servers, or computer
14 infrastructure associated with the operation of websites.

15 THE COURT: Associated with the what?

16 MR. HAGHIGHAT: Operation of websites.

17 THE COURT: Just a moment. I'm not sure I know what
18 that means, associated with the operation of websites.

19 MR. HAGHIGHAT: In order to host the website, you often
20 need to register domains or rent servers or do other
21 computer-related items. And what we're saying is, he can't
22 create, register, or rent any infrastructure that could help
23 with operating a website.

24 THE COURT: All right. Any problem with that?

25 MR. KATZ: No, Your Honor.

1 THE COURT: All right. I'll impose that. Next?

2 MR. HAGHIGHAT: Those are the only three, Your Honor.

3 THE COURT: All right. I'll impose all of those that
4 have been added without objection. Anything further to be
5 accomplished today?

6 We do need to have Mr. Fitzpatrick come to the podium.
7 I'll impose the bond oath again today.

8 Mr. Fitzpatrick, come to the podium. I'm going to have
9 the deputy clerk administer an oath to you that makes clear that
10 you will abide by all of these conditions, including the
11 \$300,000 bond that you've already had imposed on you.

12 COURTROOM CLERK: You do acknowledge yourself indebted
13 onto the United States of America in the sum of \$300,000, upon
14 the condition that you appear before this court at such time as
15 the court may direct, to abide the judgment of the court, and do
16 not part without leave of court, so help you God?

17 THE DEFENDANT: I do.

18 THE COURT: And it's very important, Mr. Fitzpatrick,
19 that you abide by all of the conditions that we've reviewed
20 today. Do you understand those?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: All right. Anything further in this matter
23 today on behalf of the government?

24 MR. HAGHIGHAT: Yes, Your Honor. Just for the record,
25 there's also been a consent order of forfeiture --

1 THE COURT: I've signed it.

2 MR. HAGHIGHAT: Okay.

3 THE COURT: Anything else on behalf of the defendant?

4 MR. KATZ: No, Your Honor.

5 THE COURT: All right. Does the probation officer have
6 anything further?

7 THE PROBATION OFFICER: No, Your Honor.

8 THE COURT: I thank counsel for your cooperation, and
9 court will stand in recess until 9 o'clock tomorrow morning.

10 (Off the record at 6:34 p.m.)

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16 **CERTIFICATE OF OFFICIAL COURT REPORTER**

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18 I, Rebecca Stonestreet, certify that the foregoing is a
19 correct transcript from the record of proceedings in the
20 above-entitled matter.

21

22

23 _____//Rebecca Stonestreet_____

____4/24/24_____

24 **SIGNATURE OF COURT REPORTER**

DATE

25